No. 186

JUL

IN THE

Supreme Court of the United States

October Term—1952

FLORENCE KRUMM ROBISON,

Plaintiff-Respondent,

vs.

EDWARD GEORGE ROBISON,

Defendant-Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY WITH BRIEF IN SUPPORT THEREOF

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, Edward George Robison, defendant-appellant, petitions for a writ of certiorari to review a decision of the Supreme Court of New Jersey, affirming the decree of the Superior Court of New Jersey, Chancery Division of Essex County, which found that the latter court was vested with power to alter, change and amend a decree of alimony of the Circuit Court of the Eleventh Judicial Circuit of Florida.

Statement of Matter Involved

The case involves the right of the courts of a foreign state to change an award of alimony ordered in a divorce decree by a state which has obtained jurisdiction of the parties and the subject matter.

The plaintiff-respondent filed a suit for divorce against the petitioner in the Circuit Court of Dade County, Florida (R. 25a).* The defendant-petitioner appeared and filed an answer (R. 36a). The Florida Court rendered a final decree which adjudged that the court had jurisdiction of the parties and the subject matter; that the bonds of matrimony be dissolved; that the defendant (petitioner herein) pay to the plaintiff (respondent herein), as alimony, the sum of $28,600.00 in the following manner: e.g. $4,000.00 in cash three days after the filing of the decree and $200.00 monthly on the first day of each and every month. The decree was entered in 1945 (R. 10a). The defendant-petitioner forthwith paid the $4,000.00 and has ever since paid the monthly sums of $200.00 (R. 23a).

The plaintiff-respondent in 1951 brought suit in New Jersey to secure increased monthly payments (R. 1a). She recited the final decree of divorce but asserted that the agreement for support, which was merged into the decree, is not binding because it is subject to modification by the court of Florida (R. 21a-20 to 30). The plaintiff-respondent then asked the New Jersey Court to adjudicate the cause upon the ground that jurisdiction was given to the New Jersey Court under New Jersey Statute R.S. 2:50-37. This statute briefly provides that after a judgment of divorce, whether obtained in New Jersey or elsewhere, the court may make such order touching the alimony of the wife as the circumstances of the parties and the nature of the case shall render fit, reasonable and just (Appendix C at p. 18 herein). The defendant-petitioner moved to dismiss the action upon the ground that the Florida decree was protected by the full faith and credit clause of the United States Constitution; that since the plaintiff-respondent relied upon the validity of the Florida decree severing the bonds of matrimony, she was bound

* Refers to printed Record filed in this Court and accompanying this Petition and Brief in support thereof.

by the entire decree and could not challenge a portion thereof awarding alimony. The defendant-petitioner further contended that the Florida decree of divorce awarding alimony was *res adjudicata*, had been rendered by a court of competent jurisdiction and was subject to the full faith and credit clause of the United States Constitution; and that New Jersey did not have jurisdiction to alter a part of a final decree of a judicial proceeding of a sister state, which had been rendered after appearance by the parties and full litigation of the issues (R. 19a). The Supreme Court of New Jersey decided that New Jersey had the power to alter and change a decretal portion of a judicial proceeding of the courts of a sister state wherein jurisdiction of the parties had been obtained and the issues litigated. The Supreme Court of New Jersey in its opinion held:

> "it is clear that subsequent to the entry of the Florida decree the courts of this state had equal jurisdiction with those of Florida to review the award of alimony and to determine whether or not under the present circumstances it is reasonable and just." (R. 55a)

The matter involved is of wide import and undecided by this court. May the alimony provisions of a decree of divorce in a court of one State having jurisdiction over the subject matter and parties be enlarged or decreased by the court of another State later securing jurisdiction over the parties?

No allegation was made that there had been any change in the circumstances of the husband, the defendant-petitioner herein.

Jurisdiction

1. Jurisdiction of this court is invoked under Title 28, United States Code, section 1257 which provides, in part:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> • • •
>
> "(3) By writ of certiorari * * * where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution * * * of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution * * * of the United States."

2. The Supreme Court of the State of New Jersey is the highest court of the state.

3. The judgment of which review is sought is a final judgment of the Supreme Court of New Jersey.

4. The judgment herein sought to be reviewed was filed on April 28, 1952. On May 26, 1952 the Supreme Court of New Jersey entered an order holding the mandate for 45 days to enable your petitioner to apply to this court for a writ of certiorari.

5. The Federal question of substance, which has been decided by the state court is that the constitutional guaranty contained in Article 4, Section 1 of the United States Constitution, that full faith and credit shall be given in each state to the judicial proceedings of every other state, has been infringed by the decision of the Supreme Court of the State of New Jersey that New Jersey, after the entry of the Florida decree, has equal jurisdiction with the courts of Florida to review the award of alimony. That decision

of the Supreme Court of the State of New Jersey is in conflict with the decisions of this court construing Article 4, Section 1 of the United States Constitution. *Bates* v. *Bodie*, 245 U. S. 520; *Yarborough* v. *Yarborough*, 290 U. S. 202; *Magnolia Petroleum Company* v. *Hunt*, 320 U. S. 430; *Sherrer* v. *Sherrer*, 334 U. S. 343; *Coe* v. *Coe*, 334 U. S. 378.

6. The Federal question was timely raised and considered. Upon the commencement of the action the petitioner filed a motion to dismiss the cause, specifically claiming the protection of the full faith and credit clause of the Constitution of the United States of America (R. 19a). The Supreme Court of the State of New Jersey in its opinion recites:

> "The defendant moved to dismiss the instant complaint on the grounds that the court lacked jurisdiction to entertain the action because the Florida decree was protected by the full faith and credit clause of the Federal Constitution; * * *" (R. 53a)

The Question Presented

May the alimony provisions of a decree of divorce in a court of one State having jurisdiction over the subject matter and parties be enlarged or decreased by the court of another State later securing jurisdiction over the parties?

Reasons Relied on for the Allowance of the Writ

The Supreme Court of New Jersey has decided that the courts of New Jersey have equal jurisdiction with the courts of Florida to review an award of alimony contained in a valid decree of divorce and to determine whether the award of alimony contained in a decree of divorce, made by the courts of Florida, is reasonable and just. This determination of the Supreme Court of New Jersey in effect holds that judgments of divorce in which alimony is awarded

are not judicial proceedings entitled to the protection of the full faith and credit clause of the Federal Constitution. The decision of the New Jersey Supreme Court is contrary to the decisions of this court in the following cases: *Barber* v. *Barber*, 62 U. S. 226; *Lynde* v. *Lynde*, 181 U. S. 183; *Bates* v. *Bodie*, 245 U. S. 520; *Yarborough* v. *Yarborough*, 290 U. S. 202; *Loughran* v. *Loughran*, 292 U. S. 216; *Barber* v. *Barber*, 323 U. S. 77; *Coe* v. *Coe*, 334 U. S. 378; *Sherrer* v. *Sherrer*, 334 U. S. 343; *Estin* v. *Estin*, 334 U. S. 541.

This court has held that judgments for divorce and alimony where jurisdiction has been secured of the parties are judicial proceedings which are entitled to full faith and credit. *Barber* v. *Barber*, 62 U. S. 226; *Yarborough* v. *Yarborough*, 290 U. S. 202; *Coe* v. *Coe*, 334 U. S. 378.

This recognition of the protection of the constitutional provision to such judicial proceedings does not preclude enforcement of past due alimony installments in other states. The continuing operation of the award is controlled by the laws of the state entering the decree. *Barber* v. *Barber*, 62 U. S. 226; *Lynde* v. *Lynde*, 181 U. S. 183; *Sistare* v. *Sistare*, 218 U. S. 1.

The Florida statute provides that the award may only be changed by the courts of Florida (Appendix D at p. 19 herein). This court in *Sutton* v. *Leib*, 96 L. Ed. 352, decided March 3, 1952, decided that the determination of the continuance of an alimony award was controlled by the construction of the law of Illinois whose courts had entered the decree.

The very basis of the rule that future installments are not enforceable rests upon the recognition of the continuing jurisdiction of the court which granted the award to alter or modify it.

The judgment of the Supreme Court of New Jersey manifestly disregards the right of the State of Florida to control its own decree and thus renders a decree of Florida

subject to the policy of another state in which the wife may serve the husband and bring an action for modification. There is a clear distinction between the right of another state to specifically enforce a decree which is subject to modification in the courts of the state which entered the decree and the right of another state to change a decree of the state having original jurisdiction. If full faith and credit shall be given in each state to the judicial proceedings of every other state, then New Jersey has no right while acknowledging the validity of a judicial proceeding of Florida, a decree of divorce, at the same time to step in and modify a portion of that judicial proceeding, to wit: the award of alimony. This is a judicial proceeding of Florida entitled to full faith and credit in every other state, and until changed by Florida, is not challengeable by collateral attack in other jurisdictions.

If the New Jersey decision is a correct statement of the law, then a provision for the payment of alimony in a decree of divorce of one State could be enlarged or diminished in 47 other States. The question arises, which of these 48 awards would be entitled to full faith and credit. It is respectfully submitted that once an award of alimony has been made it is a judicial proceeding within the full faith and credit clause and may only be changed in accordance with the law of the state which entered the award.

Your petitioner respectfully submits that the writ of certiorari should issue to the end that this Court may review the decisions of the Supreme Court of New Jersey and determine whether that court has deprived the petitioner of the right guaranteed by Article 4, Section 1 of the United States Constitution.

Respectfully submitted,

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